REMARKS

Claims 1-17 were pending in this application.

Claims 1-17 have been rejected.

Claims 1-13 and 15-17 have been amended.

Claims 18-20 have been added.

Claims 1-20 are now pending in this application.

Reconsideration and full allowance of Claims 1-20 are respectfully requested.

I. OBJECTION TO SPECIFICATION

The Office Action objects to the specification and notes the guidelines for the preferred layout of the specification. The Office Action then asserts that the Applicants are required to submit a new specification and a statement that no new matter has been added.

First, the Applicants respectfully note that the Office Action does not actually object to the specification. In particular, the Office Action does not idenitfy how the specification fails to comply with any required guidelines. Second, the Applicants respectfully note that the guidelines specified in MPEP § 608.01(a) are not required. For example, the Applicants respectfully note that section headings are not required under MPEP § 608.01(a).

Based on this, the Applicants respectfully submit that there is no need for a replacement specification.

II. OBJECTIONS TO CLAIMS

The Office Action objects to Claims 1-13 because of various informalities in the claims. The Applicants have amended Claims 1-13 to correct the noted informalities. The Applicants respectfully request withdrawal of the objections to the claims.

III. REJECTION UNDER 35 U.S.C. § 102

The Office Action rejects Claims 9-13, 16, and 17 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,151,018 to Webb et al. ("*Webb*"). This rejection is respectfully traversed.

A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. (*MPEP § 2131; In re Bond, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990)*). Anticipation is only shown where each and every limitation of the claimed invention is found in a single prior art reference. (*MPEP § 2131; In re Donohue, 766 F.2d 531, 534, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985)*).

Webb recites an apparatus, method, and system for improving a picture produced from a broadcast video signal by encoding "picture parameter correction information" into the vertical blanking interval of the video signal. (*Abstract*). Prior to transmission, images are displayed to a colorist, and the colorist uses a GUI 20 to adjust settings of the images (such as clarity, noise reduction, intensity, color, and black level). (*Figure 2; Col. 4, Lines 1-6*). The selected settings are then processed using a best fit algorithm to identify a "preset" that most closely matches the settings

of the colorist. (*Col. 4, Lines 6-11*). The preset is then saved, transmitted with the images, and used by a decoder to decode and display the images. (*Col. 4, Lines 11-17; Col. 5, Lines 22-35*).

Claim 9 has been amended to recite "processing means" for "allocating a budget to [an] algorithm" and "assigning a first quality level ... to [a] first function and assigning a second quality level ... to [a] second function." As acknowledged in the Office Action, *Webb* does not disclose "allocating a budget to the algorithm." (*Office Action, Page 6, Second paragraph*). As a result, *Webb* does not anticipate all elements of Claim 9.

For these reasons, *Webb* does not anticipate the Applicants' invention as recited in Claim 9 (and its dependent claims). Accordingly, the Applicants respectfully request withdrawal of the § 102 rejection and full allowance of Claims 9-13, 16, and 17.

IV. REJECTION UNDER 35 U.S.C. § 103

The Office Action rejects Claims 1-8, 14, and 15 under 35 U.S.C. § 103(a) as being unpatentable over *Webb* in view of Admitted Prior Art ("*APA*"). This rejection is respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. (*MPEP § 2142; In re Fritch, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992)*). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. (*MPEP § 2142; In re Oetiker, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); In re Piasecki, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984)*). Only when a *prima facie* case of obviousness

is established does the burden shift to the applicant to produce evidence of nonobviousness. (*MPEP § 2142; In re Oetiker, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993)*). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. (*In re Oetiker, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); In re Grabiak, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985)*).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. (*In re Bell, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993)*). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. (*MPEP § 2142*).

As described above in Section III, *Webb* simply recites a mechanism where a colorist uses a GUI 20 to adjust settings of images, and the selected settings are used to identify a "preset" that most closely matches the settings. The preset is then saved, transmitted with the images, and used by a decoder to decode and display the images.

APA recites a decoding algorithm that includes multiple functions, such as low pass filtering

and upsampling. (*Application, Page 1, Lines 13-14*). A CPU load is determined for each function. (*Application, Page 1, Lines 14-16*). Using the CPU load for each function, the functions from the algorithm that can be performed using an "allowed CPU load" are identified. (*Application, Page 1, Lines 16-17*). A budget for each function is then individually allocated to each function. (*Application, Page 1, Lines 17-18*).

First, Claim 1 recites "allocating a budget to the algorithm to enable operating the algorithm at an output quality level," where the algorithm "comprises a first function and a second function." *APA* simply recites allocating a budget to individual functions that make up an algorithm. *APA* lacks any mention of allocating a budget to an algorithm as a whole. As a result, *APA* fails to disclose, teach, or suggest "allocating a budget to the algorithm," where the algorithm "comprises a first function and a second function" as recited in Claim 1.

Second, Claim 1 recites assigning a "first quality level" to the first function of the algorithm and assigning a "second quality level" to the second function of the algorithm "based on the output quality level." *APA* simply recites allocating a budget to each function of an algorithm without reference to an output quality level. As a result, *APA* fails to disclose, teach, or suggest assigning quality levels to different functions based on an "output quality level."

Webb also fails to disclose, teach, or suggest these elements of Claim 1. *Webb* simply recites that a decoder uses information identifying a "preset." The preset is associated with different settings that are used to process images. *Webb* lacks any mention of assigning a "first quality level" to a first function of an algorithm and assigning a "second quality level" to a second function of an algorithm based on an "output quality level."

Webb does recite allowing a colorist to select different settings for different characteristics of an image. However, the settings selected by the colorist are based on the colorist's subjective opinions regarding an image. The settings selected by the colorist in *Webb* are not based on an "output quality level" that is determined by allocating a "budget" to an "algorithm" as recited in Claim 1.

For these reasons, the proposed *Webb-APA* combination fails to disclose, teach, or suggest the Applicants' invention as recited in Claim 1 (and its dependent claims). Accordingly, the Applicants respectfully request withdrawal of the § 103 rejection and full allowance of Claims 1-8, 15, and 15.

V. NEW CLAIMS

The Applicants have added new Claims 18-20. The Applicants respectfully submit that no new matter has been added. The Applicants respectfully request entry and full allowance of Claims 18-20.

VI. CONCLUSION

The Applicants respectfully assert that all pending claims in this application are in condition for allowance and respectfully request full allowance of the claims.

SUMMARY

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this application, the Applicants respectfully invite the Examiner to contact the undersigned at the telephone number indicated below or at *wmunck@davismunck.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication (including any extension of time fees) or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

DAVIS MUNCK, P.C.

Date: Dec. 22, 2004

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